

Regulation of Drones by Homeowners' Associations

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The use of unmanned aircraft systems, typically called drones, is becoming increasingly common as technology has made them smaller and cheaper. Some homeowners' associations (HOA's) are considering regulating them, since they can be used in ways that violate the privacy of residents. In addition to flying them over properties belonging to other residents, operators can fly them over HOA common areas, including private roads in gated communities.

Drones with cameras that take photographs and videos present privacy issues. Even drones without such accessories can be used in other ways that are annoying, or even dangerous.

Drone regulations in an HOA may be adopted by its board of directors if the HOA's governing document permit the board to adopt rules and regulations. Otherwise, they would need to be approved by the number of owners that is required to amend the governing documents in accordance with their terms. Even if the board has authority to adopt drone regulations, because such regulations can be construed as restricting the use of lots, if they are to be adopted at a meeting of the board of directors, pursuant to Florida law the board must post a notice to that effect in the community and provide 14 days' prior notice of the meeting to the homeowners.

Drone regulations should apply to any type of unmanned aircraft, either with or without cameras, and should govern their use by all owners and their family members, tenants, guests and invitees on, over or from any lot or common area within the community, except for drone use that the HOA may wish to specifically exempt from the regulations. Such exemptions may include the following:

- An owner flying a drone over their own lot, or over any other lot with the written consent of the owner;
- An owner flying a drone over the HOA's common areas so the owner or its authorized agent can periodically inspect the owner's lot or home, or take photographs or videos to be used solely for purposes personal to the owner (such as for the purpose of marketing the lot or home for sale

or lease), or as otherwise permitted by the board from time to time; and

- An owner flying a drone over portions of the HOA common areas that are considered “open space” (i.e., areas not improved by roads, sidewalks, ponds, fountains, tennis courts, playgrounds, gatehouses, entry features or other permanent improvements, besides landscaping).

Drone regulations should contemplate that any party operating a drone within the community shall be deemed to have agreed to:

- Assume all risks and liabilities associated with such activity (including but not limited to liability for injuries to themselves and others, damage to property, claims of invasion of privacy, nuisance, harassment, etc.),
- Indemnify the HOA and its directors, officers and other representatives against any claims that may be asserted against them on account of the operator’s activities (including but not limited to reasonable attorneys’ fees and costs).

The HOA may wish to specify that all drones must be operated in accordance with federal, state and local regulations, all as amended from time to time. Although that is obviously required anyway, having it included in the HOA’s drone regulations would give the HOA remedies (such as fines) for violations.

Additionally, in no event should an operator of a drone be permitted to take photographs or videos of any person without that person’s prior written consent, or invade the privacy of another person on any lot or common area. Finally, no party should be allowed to operate a drone in any manner that constitutes a danger to persons or property, that constitutes a nuisance, or that harasses, annoys, or disturbs the quiet enjoyment of another person, including without limitation, another owner or their family members, lessees, guests or invitees.

The board of directors should be vested with the exclusive authority to adopt other rules and regulations concerning the operation of drones on, over or from lots or common areas within the community.

For any questions regarding drone regulations in HOA, please contact Gary Kaleita at gary.kaleita@lowndes-law.com.